

STATE OF NEW HAMPSHIRE

SITE EVALUATION COMMITTEE

SEC DOCKET NO. 1998-01

Application of Newington Energy, L.L.C.

Request of Newington Energy L.L.C. to Revise the Certificate of Site & Facility issued on May 25, 1999, which authorized the construction and operation of a 525-megawatt electric production facility in the Town of Newington, Rockingham County, known as the Newington Power Facility

DECISION AND ORDER

ON CONDITIONAL REQUEST FOR AUTHORIZATION TO CONSTRUCT ONE AST AND TO REVISE NEL'S CERTIFICATE CONSISTENT THEREWITH

I. Introduction

On May 25, 1999, the Site Evaluation Committee (Committee) issued a report and order which granted the application of Newington Energy, L.L.C. (NEL) to construct and operate a 525-megawatt gas fired electric production facility and associated overhead transmission lines, in the Town of Newington, N.H. (Facility) subject to various conditions (Certificate.)

The Facility's primary fuel is natural gas transported through the Maritimes & Northeast/PNGTS, Newington Lateral Pipeline. The Certificate allows the facility to burn up to 19,850,000 gallons of low sulfur diesel fuel as back up fuel in any consecutive 12-month period. Certificate, Attachment G, p. 5. To accommodate the back-up fuel, NEL was permitted to construct two on-site aboveground storage tanks (AST), each holding 1,050,000 gallons of low sulfur diesel fuel.

Subsequent to the issuance of the Certificate, NEL and Sprague Energy Corp. (Sprague) entered into a terminal agreement. Sprague owns and operates terminal facilities for the storage of oil and other hazardous and nonhazardous liquids located in proximity to the NEL Facility. As a result of its agreement with Sprague, NEL now seeks to revise the Certificate to eliminate one of the ASTs located at the Facility. Sprague intends to construct, operate and maintain a six-inch inside diameter fuel transfer pipeline from its present terminal facilities to the Newington Energy Power Facility for the purposes of delivering the low sulfur diesel fuel to NEL. Sprague recently sought, and was granted, an exemption from the statutory site evaluation process pursuant to RSA 162-H: 4, for the proposed pipeline. *See*, SEC No. 2001-01.

In its Conditional Request for Authorization to Construct One AST and to Revise NEL's Certificate Consistent Therewith (Conditional Request), NEL describes its agreement with Sprague. NEL will lease the exclusive right of storage and one dedicated tank at the existing Sprague terminal facility with a safe fill capacity of 55,000 barrels (2,310,000 gallons) of low sulfur diesel fuel. Newington will lease an additional commingled storage capacity of 45,000

barrels (1,890,000 gallons of low sulfur diesel fuel) for a six-month period from October 1 through March 31 of each year. NEL has the option to lease this capacity on a month-by-month basis for the balance of each year. *See*, Conditional Request p. 2.

As a result of the terminal agreement and the anticipated construction of the Sprague Pipeline, NEL has determined that it no longer requires two ASTs at the Facility. NEL submits that the agreement with Sprague eliminates substantial environmental risk associated with truck deliveries and safely manages the delivery of fuel oil through a state of the art oil pipeline.

II. Procedural History

NEL filed its Conditional Request with the Committee on or about April 30, 2001, and mailed copies to all other parties in this docket including Public Counsel, the Town of Newington, and Public Service Company of New Hampshire. No objections or other responses were received. After consideration of the Conditional Request at a duly noticed meeting of the Committee held on May 15, 2001, the Committee voted to grant the Conditional Request subject to the condition that NEL submit to counsel for the Committee such documents as NEL may choose which will demonstrate to the satisfaction of counsel for the Committee that there is a long term capacity to store a backup supply of fuel equal to or greater than 50,000 barrels or 2.1 million gallons as in the original approved plans. Transcript, p. 110.¹ Under cover of a letter dated, June 20, 2001, and pursuant to an agreement of confidentiality, NEL, provided counsel for the Committee a redacted version of the Terminal Agreement between NEL and Sprague.² Counsel has advised the Committee that he is satisfied that the documents provided by NEL confirm a long term contractual capacity to store backup fuel equal to or greater than the amount provided for in NEL's original Application for a Certificate of Site and Facility.

III. Reasons for Decision

The Committee has already considered and approved the Application for Exemption filed by Sprague finding that Sprague had met the statutory requirements for an exemption from the statutory site evaluation process embodied in RSA 162-H. Conditioned upon that approval, NEL now seeks to revise its Certificate to permit the construction of one, rather than two, ASTs as part of its certificated Facility. The Committee accepts NEL's representation that the use of an oil pipeline directly from Sprague will eliminate approximately one hundred tanker truck deliveries per day at those times when the Facility is burning backup fuel. Each time a truck picks up oil at the terminal and each time oil is delivered to the Facility creates a risk of harm to the environment from an accidental spill. The use of the pipeline also eliminates the need to store as much backup fuel at the Facility.

¹Citations to "Transcript" are referencing the Transcript of the public meeting held by the Committee on May 15, 2001, in the Town of Newington.

²The Terminal Agreement contains proprietary financial, trade and industrial information which may be categorized as trade secrets and therefore has not been submitted as an exhibit and is subject to a confidentiality agreement signed by counsel to the Committee. The contents of the Terminal Agreement have not been reproduced for nor reviewed by the Committee.

The Committee has an obligation to monitor the construction and operation of a facility which is granted a certificate under RSA 162-H. RSA 162-H: 4, I (c). The Committee finds that the revision of the Certificate, as sought by NEL, will assure operation of the Facility in a manner which decreases exposure to the risk of environmental harm from accidental oil spills during the operation of the Facility on backup fuel.

The Committee further finds that the requested revision of the Certificate does not affect NEL's financial, technical, and managerial capability to assure construction and operation of the Facility in continuing compliance with the terms and conditions set forth in the Certificate. RSA 162-H: 16, IV (a). The requested revision of the Certificate does not unduly interfere with the orderly development of the region with due consideration of the views of municipal and regional planning commissions and governing bodies. RSA 162-H: 16, IV (b). Indeed, the revision to the Certificate will reduce the number of structures at the Facility and reduce truck traffic between the Facility and its oil suppliers. Similarly, there is no indication that the requested revision will cause any unreasonable adverse effect on aesthetics, historic sites, air and water quality, the natural environment, or public health and safety. RSA 162-H: 16, IV (c). As indicated above, the replacement of one AST with the Sprague Pipeline will reduce the risk of environmental and public harm caused by accidental oil spills. Finally, the Committee finds that the requested revision of the Certificate is consistent with the State's Energy Policy in that it will increase reliability by eliminating the need for multiple truck deliveries of oil at those times when the Facility is required to burn back up fuel. RSA 162-H: 16, IV (d). The Committee is also convinced that NEL has made appropriate arrangements to maintain an adequate storage capacity for its backup fuel needs.

IV. Conclusion

For the foregoing reasons the Committee will grant NEL's Conditional Request.

ORDER

WHEREAS, Newington Energy, L.L.C. has filed a Conditional Request for Authorization to Construct One AST and to Revise NEL's Certificate Consistent Therewith which seeks to revise the Certificate of Site and Facility issued by the Site Evaluation Committee on May 25, 1999, by eliminating the construction of one of the two ASTs authorized to accommodate backup low sulfur fuel oil; and,

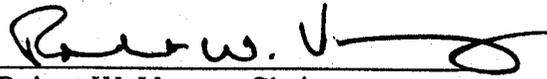
WHEREAS, the requested action offers a clean, safe and reliable method of low sulfur diesel fuel transfer to the Newington Energy facility and does not substantially change the findings made the Committee in the Decision and Order issued on May 25, 1999;

IT IS HEREBY:

ORDERED: that Newington Energy, L.L.C.'s Conditional Request for Authorization to Construct One AST and to Revise NEL's Certificate Consistent Therewith is hereby GRANTED; and,

FURTHER ORDERED: That, pursuant to RSA 162-H:4 III (a), the Committee delegates to the New Hampshire Department of Environmental Services authority to review the final engineering plans for the construction of the aboveground storage tank pursuant to Env-Wm 1402. The Department of Environmental Services is authorized to monitor and enforce environmental standards as well as the authority to specify minor changes to the extent that such changes are authorized by the Certificate of Site and Facility.

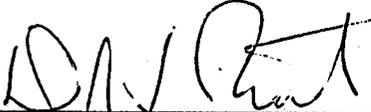
SO ORDERED, this 29th day of June, 2001.



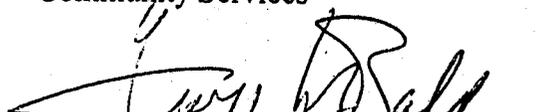
Robert W. Varney, Chairman
Commissioner, Department of
Environmental Services



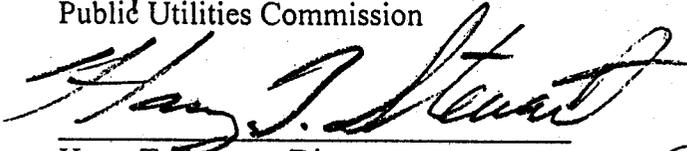
Mary Ann Manoogian, Director
Governor's Office of Energy &
Community Services



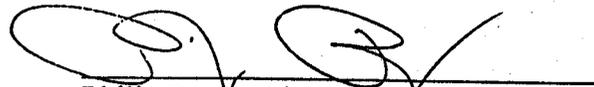
Douglas L. Patch, Chairman
Public Utilities Commission



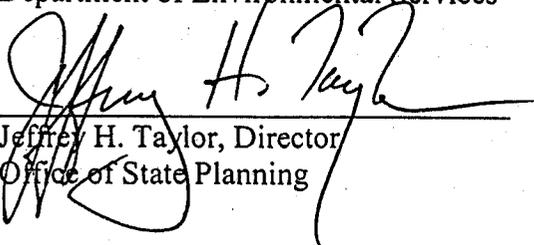
George M. Bald, Commissioner
Department of Resources & Economic
Development



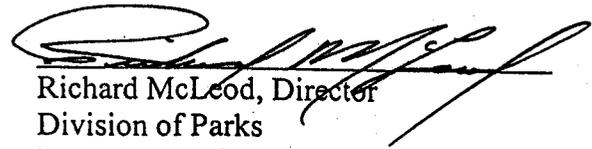
Harry T. Stewart, Director
Water Division
Department of Environmental Services



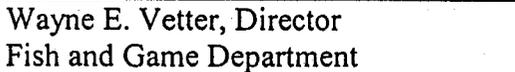
Philip Bryce, Director
Division of Forests & Lands
Department of Resources & Economic
Development



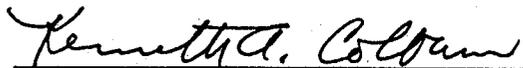
Jeffrey H. Taylor, Director
Office of State Planning



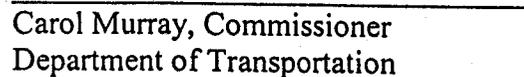
Richard McLeod, Director
Division of Parks
Department of Resources & Economic
Development



Wayne E. Vetter, Director
Fish and Game Department



Kenneth A. Colburn, Director
Air Resources Division
Department of Environmental Services



Carol Murray, Commissioner
Department of Transportation

Brook Dupee

Brook Dupee, Assistant Director
Office of Community & Public Health
Department of Health & Human Services

Susan S. Geiger

Susan S. Geiger, Commissioner
Public Utilities Commission

Nancy Brockway

Nancy Brockway, Commissioner
Public Utilities Commission

Kathryn La Bailey

Kathryn Bailey, Chief Engineer
Public Utilities Commission

Appeals Process

Any person or party aggrieved by this decision or order may appeal this decision or order to the New Hampshire Supreme Court by complying with the following provisions of RSA 541:1

541:3 Motion for Rehearing. – Within 30 days after any order or decision has been made by the commission, any party to the action or proceeding before the commission, or any person directly affected thereby, may apply for a rehearing in respect to any matter determined in action or proceeding, or covered or included in the order, specifying in the motion all grounds for rehearing, and the commission may grant such rehearing if in its opinion good reason for the rehearing is stated in the motion.

541:4 Specifications. – Such motion shall set forth fully every ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable. No appeal from any order or decision of the commission shall be taken unless the appellant shall have made application for rehearing as herein provided, and when such application shall have been made, no ground not set forth therein shall be urged, relied on, or given any consideration by the court, unless the court for good cause shown shall allow the appellant to specify additional grounds.

541:6 Appeal. – Within thirty days after the application for a rehearing is denied, or, if the application is granted, then within thirty days after the decision on such rehearing, the applicant may appeal by petition to the supreme court.